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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

West Central Regional Office

3019 Peters Creek Road, Roanoke, Virginia 24019

Telephone (540) 562-6700, Fax (540) 562-6725

www.deq.virginia.gov

L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO THE TOWN OF CLIFTON FORGE, VPDES Permit No. 0022772

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) by the State Water Control Board to the Town of Clifton Forge for the purpose of resolving certain alleged violations of State Water Control Law and the Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

7. "Regulations" means the Virginia Pollution Discharge Elimination System Permit Regulation, 9 VAC 25-31-10 *et seq.*
8. "Clifton Forge" or "the Town" means the Town of Clifton Forge, in the Commonwealth of Virginia.
9. "Infiltration" means the water entering a sewer system and service connections from the ground, through such means as, but not limited to, pipes, pipe joints, connections, or manhole walls.
10. "Inflow" means the water discharged into a sewer system, including service connections, from such sources as, but not limited to: roof leaders; cellars; yard and area drains; foundation drains; cooling water discharges; drains from springs and swampy areas; manhole covers; cross connections from storm sewers; surface run-off; street wash waters; or drainage.
11. "Inflow and Infiltration" or "I&I" means the total quantity of water from both infiltration and inflow without distinguishing the source.
12. "Bypass", as defined at 9 VAC 25-31-10, means the intentional diversion of waste streams from any portion of a treatment facility.
13. "Sanitary Sewer Overflow", "SSO", and "Overflow" means any discharge to state waters from Clifton Forge's Sanitary Sewer System through point sources not specified in any VPDES permit, as well as any release of wastewater from Clifton Forge's Sanitary Sewer System to public or private property that does not reach state waters, such as a release to a land surface or structure that does not reach state waters; provided, however, that wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a building lateral, other piping or conveyance system that is not owned or operationally controlled by Clifton Forge are not SSOs for purposes of this Consent Order. The burden of proving that the conditions of this exclusion are met for a particular overflow will be on Clifton Forge.
14. "Permit" means Virginia Pollution Discharge Elimination System Permit No. 0022772 issued by the Board to the Town for operation of the Clifton Forge Sewage Treatment Plant.
15. "Plant" means the Clifton Forge Sewage Treatment Plant.
16. "Sanitary Sewer System" means the wastewater collection and transmission system owned or operated by Clifton Forge designed to collect and convey municipal sewage (domestic, commercial and industrial wastewater) to the Plant.

SECTION C: Findings of Fact and Conclusions of Law

1. On March 11, 1999, the Board issued a Consent Special Order ("1999 Order") to the County of Allegheny ("the County"), the City of Clifton Forge, and the Town of Iron Gate ("Iron Gate") regarding the wastewater collection, conveyance, and treatment in the area served by the Plant. The 1999 Order included separate appendices containing different Schedules of Compliance for each jurisdiction. On July 1, 2001, the City of Clifton Forge reverted to Town status.
2. The most significant feature of the 1999 Order pertaining to Clifton Forge was a major upgrade of the treatment and equalization capacity of the Plant. Clifton Forge completed the upgrade on schedule. The 1999 Order also required Clifton Forge to: "Continue I&I reduction efforts to achieve a 50% reduction in total sewage flows from a 1.5 inch 24-hour storm by December 31, 2006, as compared to April-May 1998 data." In a letter dated February 10, 2004, Clifton Forge explained that baseline data for making the comparison required by that provision is not available. It is accordingly not possible to ascertain whether Clifton Forge has complied with this provision.
3. DEQ issued Notice of Violation ("NOV") No. W2004-04-W-0004 to Clifton Forge on April 14, 2004. That NOV listed a total of ten overflows that had occurred in the collection system between October 2003 and February 2004. The overflows ranged in volume from 100 gallons to 16,000 gallons. Most of the overflows were caused by blocked lines. Most of the line blockages were caused by tree roots. In a letter dated July 10, 2004, Clifton Forge reported that it had purchased a new jet rodder with a root cutter to be used to remove tree roots that are found with diagnostic camera work.
4. On August 10, 2004, DEQ issued NOV No. W2004-08-W-0002 to the Town. That NOV listed five overflows that had occurred in the collection system between April and June 2004. The overflows ranged in volume from 20 to 1,650 gallons.
5. On September 16, 2004, DEQ issued NOV No. W2004-09-W-0002 to the Town. That NOV listed six overflows that occurred in the collection system between April and July, 2004. The overflows ranged in volume from 20 to 2,000 gallons. The NOV also stated that Clifton Forge had failed to report pH minimum and maximum concentrations on the July 2004 Discharge Monitoring Report ("DMR").
6. On February 14, 2005, DEQ issued NOV No. W2005-02-W-0004 to the Town. That NOV repeated violations alleged in the September 2004 NOV and stated that the Town had failed to report Orthophosphate Average Loading on the November 2004 DMR.
7. On April 19, 2005, DEQ issued NOV No. W2005-04-W-0004 to the Town. That NOV listed an overflow of 20 gallons from a manhole on McCormick Boulevard that occurred on February 17, 2005.

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8. On May 16, 2005, DEQ issued NOV No. W2005-05-W-0003 to the Town. That NOV listed one 10,000 gallon overflow from the collection system that occurred on March 28, 2005. The NOV also stated that Clifton Forge had not submitted a survey of all industrial users as required by the pretreatment provisions of the Permit.
9. Between 2001 and 2005, a total of twenty-four wet weather-related overflows were reported in the Clifton Forge collection system. Half of the overflows reported during that period were caused by clogged lines. Between 2004 and 2005, wet weather-related overflows declined from twelve to five, those caused by clogged lines from 28 to 19, and total overflows declined from 46 to 29.

SECTION D: Agreement and Order

Accordingly, the State Water Control Board, by virtue of the authority granted it in Code §62.1-44.15(8a), orders Clifton Forge and Clifton Forge agrees to perform the actions described in Appendix A of this Order. The Board also orders, and Clifton Forge agrees, that this Order supersedes the provisions of the 1999 Order that pertain to Clifton Forge.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Town declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the

Board or the Director to enforce this Order.

5. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Town shall be responsible for failure to comply with its obligations under this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Town shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within forty-eight hours of learning of any condition above, which the Town intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. Any plans, reports, schedules or specifications attached hereto or submitted by the Town and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
10. This Order shall become effective upon execution by both the Director or his designee and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any compliance dates that precede the effective date of this Order.
11. This Order shall continue in effect until either: a) the Town petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order, or b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition,

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other order, certificate, certification, standard, or requirement otherwise applicable.

12. By the signature of an authorized official below, the Town voluntarily agrees to the issuance of this Order.
13. The undersigned representative of the Town certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.

And it is so ORDERED this day of JUNE 5, 2006.

Steven A. Dietrich
For David K. Paylor, Director
Department of Environmental Quality

The Town of Clifton Forge voluntarily agrees to the issuance of this Order.

By: Thomas E Harris

Date: March 7, 2006

Commonwealth of Virginia

City/County of Alleghany

The foregoing instrument was acknowledged before me this 8th day of March, 2006,

by Thomas E Harris, who is Town Manager of the
Town of Clifton Forge, on behalf of said Town.

Patricia B. Johnson
Notary Public

My commission expires: May 31, 2007

APPENDIX A

1. Not later than August 31, 2006, the Town shall complete renovation or replacement of the vault for the manhole adjacent to the Jackson Street Pump Station referred to as No. 104.
2. **Corrective Action Plan.** Not later than August 31, 2006, Clifton Forge shall submit to DEQ for review and approval a Sanitary Sewer System evaluation and Corrective Action Plan ("CAP") for meeting the requirements of Paragraph 5 below, to include the following:
 - a. **Maintenance Schedule.** A regular schedule for removing roots from manholes and sewer lines, installing cleanouts as necessary at property lines, performing regular camera work and mapping the results of the camera work, and performing repairs as necessary to breaks and blockages in the collection system lines, manholes, and pump stations.
 - b. **Evaluation Schedule.** A schedule for evaluation of those portions of the collection system which are experiencing or contributing to overflows. The evaluation must identify the locations of broken and/or blocked lines and manholes, provide estimates of peak flows (including flows that escape from the system) associated with conditions similar to those causing overflow events, provide estimates of the capacity of key system components, identify any sources of inflow originating from stormwater intake structures or collection systems, identify hydraulic deficiencies (including components of the system with limiting capacity) and identify the major sources that contribute to the peak flows associated with overflow events. Portions of the collection system which are scheduled to be abandoned or replaced need not be evaluated; however, omitted sections shall be listed in the CAP and shall be evaluated in accordance with the provisions of this paragraph within a year if they are subsequently brought back into service or the decision is made to not abandon or not replace sections that had been previously scheduled for abandonment or replacement.
 - c. **Funding Plan.** A plan for funding the Sanitary Sewer System evaluation, repair, replacement, and rehabilitation required herein. Clifton Forge shall provide in its public works budget sufficient funds to perform the activities specified in the CAP.
 - d. **Corrective Action Schedule.** A date for submittal of a Corrective Action Schedule consisting of a prioritized plan and schedule for correction of deficiencies identified during the evaluation of the system. The corrective action schedule shall identify funding sources for the proposed activities. The corrective

action schedule shall also include a schedule with a specific quantifiable goal for reducing overflows due to line blockages and other maintenance-related issues.

- e. **Compliance Verification Plan.** A plan for collecting and analyzing the data necessary to demonstrate compliance with the requirements of Paragraph 5 of this Appendix.
3. **Interim Repair Schedule.** Not later than August 31, 2007, Clifton Forge shall submit a prioritized list of corrective action projects to be completed by December 31, 2008. This list may be incorporated into the Corrective Action Schedule, as appropriate.
4. **Collection System Map.** Not later than December 31, 2007, Clifton Forge shall submit a collection system map identifying the location and size of collection system pipes, interceptors and manholes and providing a general description of the condition these system units.
5. **Deadline for Elimination of Overflows Caused by Excessive I&I.** Not later than December 31, 2010, Clifton Forge shall eliminate overflows caused by excessive infiltration and inflow, as that term is defined by EPA's Handbook entitled *Sewer System Infrastructure Analysis and Rehabilitation*, dated October 1991, and codified at 40 CFR § 35.2005(b)(16).
6. **Annual Report.** Clifton Forge shall submit an Annual Report to DEQ by February 10 of each year summarizing major activities performed pursuant to this Order and pursuant to the plans and schedules submitted under this Order during the preceding calendar year. The Annual Report shall also include: Quantitative evaluation of I&I removed during the preceding calendar year; Evaluation of financial capability regarding adequacy of dedicated sewer revenues and other financial resources for completing scheduled activities required under this Order; Expenditures on activities required under this Order; Number of overflows by location, including a frequency plot by years beginning in 2001.¹ The last Annual Report, due on February 10, 2011, shall present and analyze data collected pursuant to Paragraph 2.e of this Appendix in order to verify compliance with the requirements of Paragraph 5 of this Appendix.
7. Upon its approval by DEQ, the CAP and schedules of corrective actions in the CAP, and any revisions or updates of the CAP, shall become a part of and enforceable under the terms of this Order. Clifton Forge shall comply with all plans and schedules submitted under this Order after they have been approved by DEQ. Clifton Forge may submit proposed revisions to the CAP and/or Corrective Action Schedule as needed to DEQ for review and approval.

¹ This Order does not exempt Clifton Forge from the ongoing reporting requirements at 9 VAC 25-31-50(B).

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8. If upon completion of the evaluation specified in Paragraph 2(b) above, Clifton Forge believes that additional time beyond December 31, 2010 is needed to complete the corrective action required to eliminate overflows caused by excessive I&I in accordance with Paragraph 5 of this Appendix, then Clifton Forge may petition DEQ for an Amendment to this Order to extend the December 31, 2010 deadline. Such petition must contain sufficient information to fully explain and justify any extension of the deadline, as well as a detailed proposed revised corrective action schedule.